



## SOUTHERN UTAH WILDERNESS ALLIANCE

185 IBLA 150

Decided November 25, 2014



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 2013-33

Decided November 25, 2014

Appeal from a Decision Record and Finding of No Significant Impact issued by the Bureau of Land Management, authorizing vegetation restoration treatments on public lands. Environmental Assessment No. UT-Y020-20011-0047-EA.

Affirmed.

1. Administrative Review: Generally--Rules of Practice: Appeals

Appellant's statement of reasons for appeal is 34 pages in length. The Board's rules of practice limit statements of reasons and answers to 30 pages. 43 C.F.R. §§ 4.412(a), 4.414(b)(1). A party is required to seek and obtain the Board's leave to exceed the page limit. 43 C.F.R. §§ 4.412(a), 4.414(b). When a party ignores the rules of practice, the Board may reject the pleading and require that party to conform its pleading to the rule, or, alternatively, the Board may choose not to consider those pages of the pleading that exceed the page limit, such that a party's substantive argument might be in jeopardy as a result of ignoring the Board's rules.

2. National Environmental Policy Act of 1969: Generally--National Environmental Policy Act of 1969: Environmental Statements--National Environmental Policy Act of 1969: Environmental Assessments

An appellant seeking to overcome an Environmental Assessment carries the ultimate burden to demonstrate, with objective evidence, a failure to consider an environmental question of significance to the proposed action or failure to otherwise comply with section 102(2)(C) of NEPA.

3. National Environmental Policy Act of 1969: Generally--  
National Environmental Policy Act of 1969:  
Environmental Statements--National Environmental  
Policy Act of 1969: Environmental Assessments

The fact that more data is wanted and needed to be able to predict the degree to which restoration strategies will succeed in different areas and under different conditions does not demonstrate that a vegetation restoration project must or will fail, or that BLM's reasoning, inferences, and opinion are so scientifically reckless and flawed as to vitiate the analysis contained in an Environmental Assessment. The need for additional data or information does not compel BLM to select the no action alternative until the scientific community is satisfied that it has learned all that might be known regarding restoration of sagebrush ecosystems.

4. National Environmental Policy Act of 1969: Generally--  
National Environmental Policy Act of 1969: Environmental  
Statements--National Environmental Policy Act of 1969:  
Environmental Assessments

BLM was not required to consider eliminating livestock grazing in the Project area, because that alternative was analyzed during BLM's land use planning. The decision authorizing grazing use on designated lands was made in 2008 when BLM adopted a Resource Management Plan. When BLM has considered alternative land uses and their corresponding environmental impacts in a current Resource Management Plan and associated Environmental Impact Statement, it is not required to consider them anew each time BLM decides to approve a particular project that is permissible under that Plan.

APPEARANCES: Neal Clark, Esq., Southern Utah Wilderness Alliance, Moab, Utah, James E. Karkut, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE PRICE

The Southern Utah Wilderness Alliance (SUWA) has appealed from an October 31, 2012, Decision Record (DR) and Finding of No Significant Impact

(FONSI) issued by the Field Office Manager, Monticello (Utah) Field Office, Canyon Country District, Bureau of Land Management (BLM), approving the Beef Basin/Dark Canyon Plateau Sagebrush Restoration Project (Project) authorizing vegetation restoration treatments on approximately 20,000 acres of public land in southeastern Utah. The DR and FONSI were based on an October 2012 Environmental Assessment No. UT-Y020-2011-0047-EA (EA), prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006).

Because SUWA has not shown a basis for disturbing BLM's decision to approve the Project, it will be affirmed.

### *Background*

The primary purpose of the Project is to restore the native sagebrush ecosystem in the Project area on approximately 30,500 acres of public land, primarily consisting of pinyon-pine/juniper woodland hills interspersed with open sagebrush flats.<sup>1/</sup> The Project area is used by elk, mule deer, and other wildlife, and grazed by livestock.<sup>2/</sup> As a consequence of drought, use by elk and mule deer, grazing by livestock, natural encroachment, and artificial seeding, the native sagebrush ecosystem has suffered, resulting in an increase in the density of the pinyon-pine/juniper trees in the hills and increase in cheatgrass, an invasive, non-native species, in the flats. See EA at 4-6, 28-32, 32-33, 34-35, 36. BLM states the woodland density is high, which severely reduces understory vegetation, and cheatgrass dominates the flats. Both circumstances increase the risk of catastrophic wildfire and undermine ecosystem resilience to natural disturbances.

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<sup>1/</sup> The Project concerns public lands situated in T. 32 S., Rs. 18 and 19 E., and Ts. 33 and 34 S., Rs. 17 and 18 E., San Juan County, Salt Lake Meridian, Utah. The Project area is bordered by the Canyonlands National Park and Glen Canyon National Recreation Area, both of which are administered by the National Park Service (NPS), U.S. Department of the Interior, and by the Manti-LaSal National Forest, which is administered by the Forest Service, U.S. Department of Agriculture. See EA at 19. It "includes lands that have been proposed for wilderness designation" as part of the America's Red Rock Wilderness Act (ARRWA). Statement of Reasons (SOR) at 4. SUWA refers to the introduction of the ARRWA in both the House and Senate during the 112th Congress. However, to date, it has not been introduced in the 113th Congress, which began Jan. 3, 2013.

<sup>2/</sup> The Project area is part of the Indian Creek Allotment, which covers 226,905 acres of public land. From Oct. 1 through June 15 each year, 8,518 animal unit months (AUMs) of livestock grazing under a grazing permit and annual authorizations is permitted. EA at 5; *id.* at 30-31. Actual grazing use averages 3,995 AUMs per year.

The Project habitat goal is intended to “restore and maintain ecologically diverse, sustainable, and contiguous sagebrush ecosystems . . . as well as reducing hazardous fuels,” and “1) Re-establish a diverse community of grasses, forbs and shrubs; 2) reduce or eliminate cheatgrass; 3) reduce the potential for increased fire frequency in the project [area]; 4) improve crucial big game winter range; 5) and 6) improve habitat for sagebrush obligate species, special status species and threatened, endangered or candidate species.” EA at 6.

BLM proposed to treat 9,200 acres of public land, or close to 30 percent of the Project area, over a 5-year period, treating 800 to 2,200 acres each year.<sup>3/</sup> See generally EA at 12-18; FONSI at unp. 1. Treatment would consist of an integrated approach involving mechanical treatment (using bullhog masticators or similar equipment), prescribed fire, hand cutting, ground or aerial seeding of native plant species, hand planting of sagebrush seedlings, and aerial herbicide spraying. The treatments would be phased over the 5-year period to provide varied structure and age among remaining plants to facilitate a more natural vegetative succession process in future years. Areas were generally identified for the initial vegetation restoration treatments, but the specific areas in any particular year would be defined after annual monitoring and assessment to “identify the treatment or combination of treatment types that would work best in each identified treatment area to restore native vegetation.” EA at 6; see EA, Map 2 (Beef Basin Treatment Areas) and Map 3 (Dark Canyon Plateau Treatment Areas). In particular, “[p]re and post vegetation and soil monitoring would be conducted to determine the most appropriate treatment type for each treatment area.” EA at 12-13. An additional 10,800 acres of public land, or close to 35 percent of the Project area, would be subject to maintenance treatments during the 5-year period, if needed to maintain the restored native sagebrush ecosystem. Treatment would depend on weather and funding.

BLM assembled an interdisciplinary team of resource specialists and after scoping, issued a draft EA for a 30-day public comment period on December 29,

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<sup>3/</sup> In addition to vegetation restoration, BLM provided for altering the distribution of wildlife and livestock in the Project area by developing or improving reservoirs, springs, and other sources of water, and erecting temporary fencing to promote vegetative growth. EA at 13. It also provided for adjusting authorized grazing use, using temporary fencing or other means to keep livestock from grazing the treated areas for a minimum of two growing seasons, so that the vegetation could become established. *Id.* at 17-18, 44-45; DR at unpaginated (unp.) 5 (“[T]he grazing permittee . . . will be involved during the implementation phases of the project.”); FONSI at unp. 3.

2011.<sup>4/</sup> After receiving comments from SUWA and others, BLM issued a revised draft EA on September 9, 2012, for a 21-day public comment period, which was later extended to October 9, 2012. SUWA and others submitted comments, to which BLM responded. EA, Appendix H (Summary of Public Comments and BLM Responses). BLM issued its final EA, DR, and FONSI on October 31, 2012.

In its EA, BLM addressed the potential environmental impacts of the proposed Project and a no action alternative.<sup>5/</sup> Under the no action alternative, none of the proposed vegetation restoration treatments would be implemented in the Project area. Under the proposed action, BLM would use a combination of treatment methods, including mechanical treatment (using bullhog masticators or similar equipment), prescribed fire, hand cutting, and the aerial application of Imazapic, an herbicide. The proposed action incorporated measures for avoiding or minimizing adverse impacts to cultural resources, migratory birds, special status wildlife species, and other aspects of the human environment, including those contained in the PEIS and PER. *See, e.g.*, EA at 40, 42.

In his October 2012 DR, the Field Office Manager approved the proposed action because reducing cheatgrass and pinyon-pine/juniper would promote restoration of the native sagebrush ecosystem and move the Project area toward the historic natural disturbance regime, minimizing the likelihood of catastrophic wildfires

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<sup>4/</sup> The EA was tiered to the August 2008 Final Environmental Impact Statement (EIS) prepared for the November 2008 Monticello Field Office Resource Management Plan (RMP), the June 2007 Final Programmatic EIS for Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States (PEIS), and the June 2007 Final Programmatic Environmental Report for Vegetation Treatments on BLM Lands in 17 Western States (PER). EA at 8, 35-36. The Proposed RMP/Final EIS is available at [http://www.blm.gov/ut/st/en/fo/monticello/planning/draft\\_rmp\\_eis.html](http://www.blm.gov/ut/st/en/fo/monticello/planning/draft_rmp_eis.html) (last visited Oct. 22, 2014). The Record of Decision (ROD) and Approved RMP are available at [http://www.blm.gov/ut/st/en/fo/monticello/planning/Monticello\\_Resource\\_Management\\_Plan.html](http://www.blm.gov/ut/st/en/fo/monticello/planning/Monticello_Resource_Management_Plan.html) (last visited Oct. 22, 2014). The PEIS and PER are available at [http://www.blm.gov/wo/st/en/prog/more/veg\\_eis.html](http://www.blm.gov/wo/st/en/prog/more/veg_eis.html) (last visited Oct. 22, 2014).

<sup>5/</sup> BLM also briefly considered an alternative that would treat only public lands lacking wilderness characteristics and an alternative that would treat vegetation only with aerial seeding. *See* EA at 18-19; Answer at 11-12. However, these alternatives were eliminated from detailed analysis because they would preclude treatment of over 70 percent of the Project area, thwarting Project purposes. The first alternative was not required by the management directives of the RMP, and the second alternative would not fulfill Project purposes.

and improving habitat for big game and other wildlife species.<sup>6/</sup> See DR at unp. 4. He concluded that “[n]o treatment in the project area would result in further pinyon and juniper encroachment, infestation of cheatgrass with a simultaneous replacement of the sagebrush ecosystem, a decline in herbaceous vegetation productivity and diversity, and associated decreases in wildlife habitat.” *Id.* at unp. 4-5. His decision was supported by “a review of the record that shows research of relevant scientific information, the mitigation of potential adverse effects, and a basis of similar treatments demonstrating the BLM’s ability to successfully treat vegetative communities to meet project goals and objectives.” *Id.* at unp. 5.

The Field Office Manager determined that the proposed action conformed to the November 2008 Monticello Field Office RMP. See DR at unp. 1, 4; EA at 7. Based on an evaluation of the context and intensity (or severity) criteria of 40 C.F.R. § 1508.27, he determined the proposed action was not likely to significantly impact the human environment, concluded BLM was not required to prepare an EIS, and issued the FONSI.

SUWA timely appealed, characterizing the vegetation management Project as a “heavy-handed, landscape gardening approach” that would “deforest[] and mechanically modif[y]” “[i]ntact and functioning ecosystems[.]” SOR at 32, 33.

#### *Preliminary Matters*

[1] SUWA’s SOR is 34 pages in length. The Board’s rules of practice limit SORs and Answers to 30 pages. 43 C.F.R. §§ 4.412(a), 4.414(b)(1). A party is required to seek and obtain the Board’s leave to exceed the page limit. 43 C.F.R. §§ 4.412(a), 4.414(b). When a party ignores the rules of practice, the Board may reject the pleading and require that party to conform its pleading to the rule, or, alternatively, the Board may choose not to consider those pages that exceed the page limit. In this case, the excessive pages contain only a summary of SUWA’s arguments. However, parties are cautioned that in a different case, a substantive argument might be in jeopardy as a result of ignoring the Board’s rules.

#### *Analysis*

SUWA contends BLM’s decision to approve the Project violates section 102(2)(C) of NEPA because BLM failed to (1) take a hard look at the likely

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<sup>6/</sup> The Field Office Manager approved the proposed action described in the EA, which provided for vegetation restoration treatments on 9,200 acres, and with maintenance treatments on an additional 10,800 acres, over the course of a 5-year period. See DR at unp. 4; EA at 12. The DR stated that he was “authoriz[ing] treatment activities over the next five to ten years.” DR at unp. 4.

environmental impacts of the authorized vegetation restoration treatments,  
 (2) consider a reasonable range of alternatives to the proposed Project, and  
 (3) prepare an EIS to address significant impacts of the proposed Project. SUWA moves the Board to set aside BLM's decision and remand the case to BLM.

Before turning to SUWA's allegations, we first outline the legal framework that governs this appeal. NEPA requires BLM to consider the potential environmental impacts of a proposed action in an EIS if that action constitutes a major Federal action that significantly affects the quality of the human environment. 42 U.S.C. § 4332(2)(C) (2006). A BLM decision to proceed with a proposed action that is based on an EA tiered to a programmatic EIS will be upheld under section 102(2)(C) of NEPA, where the record demonstrates that BLM has considered all relevant environmental concerns, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result that was not addressed in the EIS or that any such impact will be reduced to insignificance by the implementation of appropriate mitigation measures. *Center for Native Ecosystems*, 182 IBLA 37, 50 (2012); *Wyoming Outdoor Council*, 173 IBLA 226, 235 (2007).

In assessing the adequacy of an EA, we are guided by a "rule of reason," such that the EA need only briefly discuss the likely impacts of a proposed action: "By nature, it is intended to be an overview of environmental concerns, *not* an exhaustive study of all environmental issues which the project raises." *Bales Ranch, Inc.*, 151 IBLA 353, 358 (2000) (quoting *Don't Ruin Our Park v. Stone*, 802 F. Supp. 1239, 1247 (M.D. Pa. 1992)).

[2] An appellant seeking to overcome an EA carries the ultimate burden to demonstrate, with objective evidence, a failure to consider an environmental question of significance to the proposed action, or otherwise failed to comply with section 102(2)(C) of NEPA. *Bales Ranch, Inc.*, 151 IBLA at 357. The appellant must make an affirmative showing that BLM failed to consider a material environmental question, and cannot simply allege errors or merely identify points of disagreements. See *Arizona Zoological Society*, 167 IBLA 347, 357-58 (2006) (quoting *In re Stratton Hog Timber Sale*, 160 IBLA 329, 332 (2004)).

BLM's decision to issue a FONSI and not prepare an EIS "implicates agency expertise." *Greater Yellowstone Coalition v. Flowers*, 359 F.3d 1257, 1274 (10th Cir. 2004). In assessing environmental impacts, BLM properly relies on the professional opinion of its technical experts concerning matters within the realm of their expertise, when that opinion is reasonable and supported by evidence of record. An appellant challenging such reliance must demonstrate, by a preponderance of the evidence, error in the data, methodology, analysis, or conclusion of the expert. See *Wyoming Outdoor Council*, 173 IBLA at 235 (citing *Fred E. Payne*, 159 IBLA 69, 77-78 (2003)). A mere difference of opinion, even among experts, will not suffice to show that BLM



failed to fully comprehend the true nature, magnitude, or scope of the likely impacts. *See id.*

SUWA first argues BLM violated section 102(2)(C) of NEPA by failing to take a “hard look” at the likely environmental impacts of the proposed Project. It asserts BLM failed to (1) adequately consider the “significant environmental risk and scientific uncertainty” regarding the likely environmental impacts, (2) consider the environmental impacts of engaging in maintenance treatments on 10,800 acres of public land, and (3) use accurate scientific data and acceptable methods of scientific analysis in assessing likely environmental impacts. SOR at 7; *see id.* at 7-19.

More specifically, SUWA argues BLM did not disclose and discuss “responsible opposing scientific viewpoints” bearing on the likely environmental impacts expressed by experts and members of the public “regarding the risk of ecological damage” from applying the proposed vegetation treatments, and unjustifiably minimized the likely adverse effects of the Project. SOR at 7 (quoting *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1167 (9th Cir. 2003)), 8. SUWA refers to its comments and those raised by The Nature Conservancy (TNC), the NPS, the Canyonlands Research Center (CRC), and concerned citizens, concerning “the risk and scientific uncertainty in disturbing large-scale landscapes within the Colorado Plateau, especially during a time of drought conditions,” and “the risk of invasive and noxious species proliferation.” According to SUWA, these issues were “repeatedly ignored” by BLM.<sup>7/</sup> *Id.* at 8 (emphasis added). SUWA concludes BLM’s decision to go forward with the Project lacked “a scientifically-supportable basis.” *Id.*

SUWA contends BLM could not properly rely on scientific studies regarding the likely effects of vegetation treatments in the Great Basin, because the Project is located in the “geographically unique Colorado Plateau,” which “possesses ecological conditions vastly different than the Great Basin.” SOR at 8. It states that studies of sagebrush ecosystem restoration efforts in the Great Basin “shed[] no light on the expected results of those same treatments within Colorado Plateau pinyon-juniper and sagebrush ecosystem.” *Id.* at 9. In support, SUWA cites a letter from CRC, “the preeminent research partnership engaged in rigorous scientific research on soils, grasses and the impacts of climate change within the project area and similar lands in the Colorado Plateau.” *Id.* SUWA quotes the CRC as follows:

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<sup>7/</sup> SUWA notes that CRC represents a “collaboration” of Federal, State, and private agencies, including the U.S. Geological Survey, NPS, Forest Service, BLM, Utah Division of Wildlife Resources, Utah State University, TNC, and others, that promotes understanding regarding the interactive effects of land use and climate and develops management solutions to meet human needs while maintaining the ecological viability of the Colorado Plateau and other semi-arid lands. SOR at 9 n.1; *see* <http://canyonlandsresearchcenter.org> (last visited Oct. 28, 2014).

[A]lthough there is a fairly large and growing body of research on sagebrush ecosystem dynamics in the Great Basin, there is a paucity of data on sagebrush restoration on the Colorado Plateau. Given the fact that these two regions have different climatic regimes combined with the lack of empirical evidence of restoration success, we have little scientific basis to assume that the restoration activities described in the Great Basin are transferable to this part of the Colorado Plateau.

SOR at 9 (quoting Letter to BLM from Dr. Barry Baker, Director, CRC, dated Oct. 5, 2012 (CRC Letter), at 1).

It appears BLM would not seriously dispute CRC's observations, which is why, presumably, BLM is one of CRC's Federal partners, and why it considered the data that is available with respect to sagebrush restoration efforts at other sites. Rather than comment or offer criticism on the data contained in the PEIS and PER to which the EA was tiered to explain why they do not constitute credible scientific evidence bearing on the quality of the EA analysis, SUWA assails BLM for ignoring the concerns expressed by commenters: "Instead of addressing this lack of documented scientific research – and in turn supporting its proposed action with relevant research or, alternatively using this absence of knowledge to establish a scientifically supportable methodology for the project – BLM simply ignored dissenting viewpoints." *Id.* From this conclusion, SUWA leaps to a more general allegation of the failure of the EA, DR, and FONSI to acknowledge the "inherent environmental risk" posed by the Project, which as proposed, "lacks a relevant (*i.e.*, Colorado Plateau) scientific basis." *Id.* at 9-10.

BLM responds that "scientific uncertainty as to whether the purposes of a project may be achieved" does not establish a NEPA violation. We agree. SUWA has cited no legal authority for its contrary suggestion, and we are aware of none. In general, we agree that BLM is required to address "responsible opposing scientific viewpoints" that show BLM has unjustifiably ignored, overlooked, or minimized the environmental impacts likely to occur as a consequence of a proposed action. See 40 C.F.R. § 1502.9(a) ("The agency shall make every effort to disclose and discuss . . . all major points of view on the environmental impacts of the . . . proposed action") and (b) ("The agency shall discuss . . . any responsible opposing view . . . and shall indicate the agency's response to the issues raised"); *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492-93 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 366 (2011). However, such viewpoints must directly bear on BLM's analysis of the likely environmental impacts at issue. As the court in *Center for Biological Diversity v. U.S. Forest Service* stated: "Because the commenters' evidence and opinions *directly challenge the scientific basis upon which the Final EIS rests* and which is central to it, we hold that Appellees were required to disclose and respond to such viewpoints in

the final impact statement itself.” 349 F.3d at 1167. That has not been shown to be the case here.

[3] At best, the evidence cited by SUWA confirms that more data is wanted and needed to be able to predict the degree restoration strategies will succeed in different areas and conditions; it does not demonstrate the Project area must or will fail, in whole or in part, or that BLM’s reasoning, inferences, and opinion are so scientifically reckless and flawed as to vitiate the NEPA analysis in this case. We think BLM is permitted to rely on the information that is available regarding likely impacts, and properly may form an opinion based on studies of vegetation treatments involving sagebrush flats and pinyon-pine/juniper woodlands in the Great Basin and elsewhere in the western United States. See EA at 61-65 (References). To hold otherwise would require BLM to defer any vegetation treatment anywhere in the Colorado Plateau until “relevant research” has been performed, which would delay efforts to control vegetation in the Project area and elsewhere for an unspecified and probably lengthy period of time. SOR at 9. We assume, moreover, that implementing the Project will contribute to the growing body of knowledge of sagebrush ecosystems, despite attendant risks. Stated differently, we do not agree that BLM is compelled to select what in essence is the no action alternative until the scientific community is satisfied it has learned all that might be known regarding the restoration of sagebrush ecosystems.

As to the inherent risks of implementing the Project, SUWA points to the potential for the invasion and spread of non-native or exotic plant species as a result of disturbing the soils and vegetation in the Project area. SUWA contends BLM “relies entirely on the use of herbicides to control any outbreak,” characterizing the EA discussion of the topic as “slight.” SOR at 12; see *id.* at 10-14. SUWA further argues BLM did not provide any “*scientific information to support its hypothesis* that herbicide, specifically the use of imazapic, will be effective in preventing the widespread proliferation of noxious or invasive species,” and also failed to “analyze or address expert comments and scientific studies to the contrary.” *Id.* at 12. In support, SUWA cites NPS comments to the effect that “imazapic applications in some cases may increase rather than reduce the proliferation of exotic annuals due to herbicide effects on competing native species.” *Id.* (quoting NPS comments dated Jan. 27, 2012, at 4).

There appears to be little dispute that there are some risks associated with achieving Project objectives, as evidenced by the comments SUWA quotes to support its contentions. See, e.g., SOR at 11 (quoting Ex. C to SOR, Hobbs, Richard J., and Huenneke, Laura F., *Disturbance, Diversity, and Invasion: Implications for Conservation*, CONSERVATION BIOLOGY, Vol. 6, No. 3, at 324-25 (September 1992) (“Disturbance acts in plant communities . . . by promoting invasions by non-native and weedy plant species.”)); 12 (quoting NPS comments dated Jan. 27, 2012, at 4);

13 (quoting CRC Letter dated Oct. 5, 2012, at 3 (the success of efforts to restore native vegetation is “highly uncertain” because of “the heterogeneity of soil properties, current vegetation conditions and structure, pre- and post-weather conditions, as well as the long-term climatic trends documented in the region (Herrick et al. 1997, Pierson et al. 2007, dos Santos et al. 2011, Miller et al. 2012).”))).

However, SUWA again overlooks the analysis and findings contained in the PEIS and PER to which the EA was tiered.<sup>8/</sup> Those documents were prepared to assess the use of herbicides on a national level and the impacts of non-herbicide treatment methods (fire, mechanical, manual, and biological controls). The PEIS thoroughly examined the direct and indirect effects of the then-current approved use of 20 active herbicide ingredients in 17 Western States and the proposed use of 14 of the approved active ingredients and 4 new ingredients, including imazapic. The PEIS analyzed the environmental impacts of herbicides on numerous resources, including soils, vegetation, and human health and safety, and it identified mitigation strategies and standard operating procedures that would guide herbicide applications to minimize and contain impacts. In addition, it identified earlier EISs pertaining to the use of herbicides in 14 Western States that evaluated the use of 22 active ingredients, as well as a number of documents and publications relevant to wildfire management, fire-adapted ecosystems, and burned area rehabilitation that also bear upon vegetation restoration. PEIS at 1-6. The objective of the PER was to provide methods and techniques of vegetation treatment directly related to reducing hazardous fuels, and improving rangeland and forestland health. PER at 1-6. BLM clearly relied on the analyses contained in these and other documents. See EA at 29-30, 36 (“The analyses in the [PEIS and PER] . . . have provided [BLM] . . . the information to . . . slow the spread of invasive plant species, noxious weeds, and other unwanted, undesirable, or competing vegetation”), 40 (“Impacts from fire or mechanical seeding would be short-term. The effects of these treatments would begin to disappear within one to two growing seasons in most landscapes.”), 41-44, 45-46, 49, 51-52, 57; EA, Appendix A (Interdisciplinary Team Checklist), at unp. 3-4.

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<sup>8/</sup> We note SUWA’s silence regarding the other objective of reducing the incidence of catastrophic wildfires, which have the potential to disturb considerably more soils and vegetation than the vegetation treatments at issue. See, e.g., EA at 36 (“Cheatgrass and dense pinyon-juniper in the treatment areas creates potential for severe, high-intensity wildland fires that would impact both the treatment area and adjacent sagebrush communities.”), 46 (“A reduction in the presence of woodlands would reduce the possibility of wildfires on a large landscape scale beyond management objectives that cause total stand loss and greater potential for further sagebrush reductions.”), 52 (“Burned areas provide favorable conditions for cheatgrass propagation and further establishment.”), 58.

BLM therefore did not presume that herbicides would eliminate the problem of invading non-native and noxious plant species. To the contrary, BLM stated herbicides would be applied “as needed dependent upon conditions and invasive response following rehabilitation efforts,” and acknowledged an expectation they would “directly hinder invasive species . . . establishment and growth in treated areas.” EA at 43; *id.* at 31 (“‘Restoration’ of the project area does not necessarily imply an objective of returning an ecosystem to a condition that may have existed at a point in history, but rather the restoration of functional processes required to sustain resource values.”), 43-44 (“[A]pplication of herbicide . . . would enable greater competitive interactions of native and seeded plant species against invasives, which should increase the success rate for the propagation, establishment, and further growth of seeded plants and current vegetative communities.”), 49 (“Overall, the restoration treatments would facilitate the long-term establishment of shrubs, perennial grasses and forbs, encourage the reduction of cheatgrass and reduce pinyon-juniper encroachment into sagebrush ecosystems.”).

Nor are herbicides the only tool that will be employed to control unwanted plant species in the Project area, as the EA, PEIS, and PER make plain. Herbicides are to be used in conjunction with other efforts to restore native vegetation. *See* EA at 13 (“Each area would be initially treated post burn/seeding and then re-treated in conjunction with the next year[']s post burn/seeding aerial application.”), 16 (“[H]erbicide treatments would be used to suppress non-native annuals . . . in order to introduce native grass, forbs and shrubs to the treatment areas.”), 39-40 (“Methods to restore native fire regimes, vegetation, and ecosystem processes would reduce the spread of noxious weeds and other invasive species.”), 44 (“The proposed treatments would reduce infestations of invasive and non-native plant species . . . . This would be accomplished by application of herbicide directed at cheatgrass dominated areas, and by providing a seed source to compete against cheatgrass.”), 49 (“There are inherent risks and the potential for direct negative impacts associated with the use of prescribed fire, including the possibility of promoting the spread of invasive non-native annuals and noxious weeds. The mechanical seeding and herbicide treatment that will follow the prescribed fire would reduce this risk.”).

As we have held previously, it is not enough to cite scientific literature without making an effort to directly relate that literature to the proposed action and the specific circumstances under which it will be implemented; a party is required to show the relevance of cited literature to the analysis of the likely environmental consequences of that action. Simply extracting a sentence or two from selected literature, without discussing the overall import of the publication or providing a complete context for excerpted material does not demonstrate BLM failed to properly comprehend the expected consequences of the proposed vegetation treatments, or failed to fully appreciate their significance, and thus does not establish a violation of NEPA. *Biodiversity Conservation Alliance*, 171 IBLA 218, 228-29 (2007); *Biodiversity*

*Conservation Alliance*, 169 IBLA 321, 343 (2006). In the absence of any discussion or acknowledgment of the analyses and mitigation contained in the PEIS and PER, and the sources to which they were tiered or upon which BLM relied, SUWA has not shown BLM erred in its assessment of the risk of invasive, non-native species proliferation, or shown the risk is likely to significantly impact soils, vegetation, or any other aspect of the human environment.

SUWA next argues that, with the treatment of 9,200 acres of public land, BLM also authorized the treatment of an additional 10,800 acres “if needed for maintenance of the sagebrush ecosystem,” but “the EA, DR and FONSI contain no indication that BLM ever considered the environmental impacts of treating an additional 10,800 acres,” which doubles the treatment area. *See* SOR at 14 (quoting FONSI at unp. 1). SUWA contends BLM failed to specifically identify the 10,800 acres, the proposed treatments, or the likely environmental impacts of any of those treatments: “Simply put, it appears that BLM has no idea where the additional 10,800 acres are located and, in turn, has no way of analyzing the environmental impacts of its proposed action on that area.” *Id.*

The record shows otherwise. BLM considered the likely environmental consequences of applying maintenance treatments on an additional 10,800 acres of public land in the Project area. *See, e.g.*, EA at 12 (“The Beef Basin/Dark Canyon Plateau Sagebrush Restoration would be accomplished over a five-year period and includes a treatment maintenance plan as necessary.”), 39 (“The proposed treatments . . . would be done incrementally in 800-2,200 acres over a 5 year period, or as needed for successful rehabilitation of treatment areas.”), 42; DR at unp. 4 (“This decision is to authorize treatment activities . . . within an approximate 30,500 acre project area.”). BLM states on appeal: “BLM assessed the potential impacts of the vegetation treatments in the 30,500-[acre] project area as a whole, and not in only the 9,200 acres considered for treatment in the first five phases of the Project.” Answer at 8. BLM also admits it did not explain how it arrived at the 10,800-acre figure, and that it did not spell out how it would decide whether and where to undertake maintenance treatments. *Id.* at 9. We do not agree the omission dooms the EA, however, because BLM analyzed the likely environmental impacts of vegetation treatments, which includes those designed to maintain the efficacy of prior treatments, on up to 30,500 acres of public land. Nor are we persuaded that the specificity SUWA would require is at this juncture practical or necessary. BLM clearly intends to determine whether and where maintenance treatments are “needed” as the 5-year Project period unfolds. FONSI at unp. 1. Those determinations will depend on future conditions demonstrating the degree of success or failure of the initial sagebrush restoration efforts, and cannot be predicted with certainty or known in advance.

SUWA argues BLM failed to use accurate scientific data and acceptable methods of scientific analysis in assessing environmental impacts. See SOR at 15-19. More specifically, it alleges failure to use the best available scientific information regarding the environmental effects of vegetation treatments in the Colorado Plateau, including a failure to initiate or undertake independent research in response to scientific uncertainty concerning such matters.

SUWA particularly takes exception to BLM's assertion, based on a 2012 study undertaken by M.R. Ross and others<sup>2/</sup> in the nearby Shay Mesa area of San Juan County, Utah, that vegetation treatment in the Project area in the long-term would reduce the current herbaceous monoculture of crested wheatgrass by seeding with a native plant mixture to promote "enhanced plant diversity" and other benefits. SOR at 17 (quoting EA at 42). It argues that, rather than providing evidence that native plant seeding results in an increase in desired native species, the Ross Study concludes native plant seeding is likely to produce the opposite result of an increase in undesirable non-native species. According to SUWA, the Ross Study states that over the course of two growing seasons, while the vegetative cover increased, "the short-term species level responses may not promote desired native species or those species that were historically present at the[] sites," resulting instead in an increase in undesirable non-native species. *Id.* (quoting Ross Study at 89) (SUWA's emphasis deleted). We do not think Ross' observation is at odds with the EA, because BLM envisions improvement of plant diversity "over the long-term." EA at 42. "Successful establishment of seeded species, in conjunction with native plant re-growth, would allow positive long-term direct effects by providing a level of desired species for the site." *Id.*

More to the point, we think SUWA embellishes the conclusion it draws from the language quoted from the Ross Study. SUWA states that "a similar vegetation treatment in a similar area resulted in the widespread proliferation of noxious and invasive species." SOR at 14; *id.* at 16-18. The Study involved treatment of an

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<sup>2/</sup> M.R. Ross, S.C. Castle, N.N. Barger, *Effects of fuels reduction on plant communities and soils in a Piñon-juniper woodland*, 79 JOURNAL OF ARID ENVIRONMENTS 84 (2012) (Ross Study). See EA at 63; SOR at 17; [http://ac.els-cdn.com/S0140196311003533/1-s2.0-S0140196311003533-main.pdf?\\_tid=d654c418-1bcf-11e3-8999-00000aacb361&acdnt=1379006702\\_659545c830acbb903188de5dd97f433](http://ac.els-cdn.com/S0140196311003533/1-s2.0-S0140196311003533-main.pdf?_tid=d654c418-1bcf-11e3-8999-00000aacb361&acdnt=1379006702_659545c830acbb903188de5dd97f433) (last visited Oct. 22, 2014). SUWA claims the Ross Study is the "only" study cited by BLM that addressed the likely effects of vegetation treatment in the Colorado Plateau, further noting: "Although BLM attached a long list of studies in the Beef Basin/Dark Canyon EA Reference section, only a few actually discuss existing vegetative conditions within the Colorado Plateau and fewer contain even a slight analysis of past vegetation treatments similar to those proposed within Beef Basin and Dark Canyon Plateau." SOR at 18.

upland pinyon-pine/juniper woodland only by means of hand cutting or mechanical treatment (mastication), with seeding. Follow-up over one or two growing seasons evidently revealed a short-term increase of undesirable non-native species that was followed by a decline. Referring to two sub-shrub species (*Gutierrezia sarothrae* (Broom snakeweed) and *Petradoria pumila* (rock goldenrod)) and an invasive, non-native species (*Bromus tectorum* (cheatgrass)), the Study stated: “These three plants comprised nearly 50% understory after one growing season in mastication plots . . . and 30% in the second growing season mastication.” Ross Study at 89. In addition, it stated that although the “post-treatment environment promotes colonization of *B. tectorum*[,] . . . we did not find evidence of continuing increases in cover through the short time frame of our study.” *Id.* (emphasis added). The Study further stated:

These changes in plant species composition . . . may be temporary until other species respond to treatment. For example, there was some evidence from our study that perennial grass cover does increase over time. *Perennial grass cover in mastication sites two growing seasons after treatment was triple (24%) that of sites that had been treated one year previous (8%).*

*Id.* at 90 (emphasis added). SUWA has not shown error in BLM’s consideration of the Ross Study.

Whether preparing an EIS or an EA, we agree BLM is required to base its analysis on “[a]ccurate scientific” information of “high quality.” 40 C.F.R. § 1500.1(b). Such information is to be the “best available scientific information.” *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1171 (10th Cir. 1999). SUWA maintains that where there is scientific uncertainty that bears on a reasoned choice among alternatives, 40 C.F.R. § 1502.22 requires BLM to disclose that scientific uncertainty, gather the necessary scientific information by conducting independent research, and use the information to evaluate the reasonably foreseeable impacts of the proposed action, unless the costs of doing so are exorbitant or the methods to obtain the information are not known. *See* SOR at 16 (citing *Colorado Environmental Coalition v. Dombeck*, 185 F.3d at 1172).

As an initial matter, the requirements of 40 C.F.R. § 1502.22 pertain only to the preparation of an EIS.<sup>10/</sup> *See Intrepid Potash-New Mexico, LLC*, 176 IBLA 110, 126 (2008) (citing 51 Fed. Reg. 15618, 15620 (Apr. 25, 1986)) “The amended regulation applies when a federal agency is preparing an EIS on a major federal action

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<sup>10/</sup> The prerequisite that triggers the obligation to gather and disclose information under 40 C.F.R. § 1502.22 is not scientific uncertainty, but “incomplete information relevant to reasonably foreseeable significant adverse impacts.”



significantly affecting the quality of the human environment and finds that there is incomplete or unavailable information relating to reasonably foreseeable significant adverse impacts on the environment.”) *Headwaters, Inc.*, 116 IBLA 129, 139 (1990); *Lane County Audubon Society*, 55 IBLA 171, 179 (1981).

In preparing an EA, BLM is not required to engage in a “potentially never-ending quest for more information,” but may proceed even in the face of some scientific uncertainty regarding likely environmental impacts. 176 IBLA at 126-27; see, e.g., *Bales Ranch, Inc.*, 151 IBLA at 358. In any event, SUWA has not identified the nature and scope of the independent research it believes BLM must undertake or shown that any such research is feasible<sup>11/</sup> or “essential to a reasoned choice among alternatives.” 40 C.F.R. § 1502.22; see *Colorado Environmental Coalition v. Dombeck*, 185 F.3d at 1172 (“Appellants simply fail to show how additional, site-specific lynx data is ‘essential’ to reasoned decision making; thus, we hold the Forest Service did not violate 40 C.F.R. § 1502.22(a) or the National Environmental Policy Act.”). We conclude BLM did not violate section 102(2)(C) of NEPA because it did not undertake to eliminate all uncertainty regarding the likely impacts of the Project.

SUWA’s related argument is the claim BLM violated section 102(2)(C) of NEPA by failing to consider a reasonable range of alternatives to the Project as proposed.<sup>12/</sup> See SOR at 19-26. It contends BLM should have considered (1) a “science-based alternative” that would have substantially “scaled back the project size,” and (2) an alternative that provided for the “permanent removal of livestock and aerial seeding” of the Project area. SOR at 5, 6. Under the first alternative, BLM would use experimental test plots to assess the effectiveness of the various types of proposed vegetation treatments before employing any of them on a larger scale. *Id.* at 20-23. Under the second alternative, after eliminating livestock grazing, native plant species would be aurally seeded. SUWA reasons that the livestock removal alternative should be considered because it will achieve the aims of the proposed action of restoring the native sagebrush ecosystem in the Project area, and do so in a

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<sup>11/</sup> It may be that SUWA would include the alternative of initially proceeding with restoration efforts on small test plots that it advocated in its comments on the EA. We address the alternatives that BLM rejected for detailed analysis below.

<sup>12/</sup> SUWA specifically argues BLM violated the requirement to “rigorously explore and objectively evaluate” all reasonable alternatives. SOR at 19. That requirement applies to an EIS; the regulation at 40 C.F.R. § 1502.14 governs the consideration of “[a]lternatives including the proposed action” at “the heart of the environmental impact statement.” See *Klamath-Siskiyou Wildlands Center*, 153 IBLA 110, 118 n.7 (2000) (“[40 C.F.R. § 1502.14] applies to agency consideration of alternatives in an EIS, and is not applicable to an EA”).

technically and economically feasible manner, with the lowest risk of environmental harm. *Id.* at 23-26.

In preparing an EA, section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2006), requires BLM to consider “appropriate alternatives” to the proposed action that will accomplish its intended purpose, are technically and economically feasible, and have a lesser impact. *See Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *Bales Ranch, Inc.*, 151 IBLA at 363. An EA must include a brief discussion of alternatives. 40 C.F.R. § 1508.9(b).

In this case, BLM considered only the proposed vegetation treatment and no action alternatives. However, as the court stated in *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005), approving a similar range of alternatives in an EA: “[NEPA] does not impose a numerical floor on alternatives to be considered.” The concern is instead “the substance of the alternatives.” *Id.* In this regard, we think BLM satisfied section 102(2)(E) of NEPA, because it considered the likely effects of either treating or not treating the Project area by various means, or the effects “at either end of the spectrum.” *Biodiversity Conservation Alliance*, 171 IBLA at 238 (quoting *In Re Blackeye Again Timber Sale*, 98 IBLA 108, 111 (1987)). In the middle are the alternatives for treating portions of the Project area by the same means. *See* 98 IBLA at 111 (“[I]t was not necessary for BLM to discuss the myriad of alternatives which could be devised, each resulting in an incremental change in the overall impact of the sale.”). The “scaled back” alternative is clearly somewhere along the continuum between the proposed action and no action. In addition, the proposed action provides for phased implementation of vegetation treatment on the initial 9,200 acres, under which smaller areas of 800 to 2,200 acres would be treated in each of the 5 years. Subsequent treatment would proceed only after BLM has reviewed the monitoring data generated during the previous year’s treatment program. In a real sense, BLM’s incremental approach approximates the gradual approach that SUWA advocates under its “scaled back” scenario. We conclude BLM was not in this case required to delve into the multitude of incremental action alternatives that are subsumed by the proposed action.

Although permanently removing livestock from the Project area would have an effect on vegetation, since livestock consume forage, BLM rejected that alternative, concluding the removal of livestock from the Project area is beyond the scope of the proposed action because it must be pursued in the grazing permit renewal process under the Taylor Grazing Act, 43 U.S.C. §§ 315-315r (2006). *See* EA, Appendix H, at Comment 6. That rationale is unavailing, because the fact that an alternative may involve actions under other statutory/regulatory authority is not alone a reason to reject an appropriate alternative that is otherwise technically and economically feasible and would have less environmental impact while accomplishing the intended purpose of a proposed action.

[4] We nonetheless conclude BLM was not required to consider eliminating livestock grazing in the Project area, because that alternative was previously analyzed during BLM's land use planning. *See* Answer at 13. BLM considered whether and to what extent to allow grazing on the public lands under the jurisdiction of the Monticello Field Office when it prepared the August 2008 Monticello Field Office Proposed RMP and Final EIS. The decision authorizing grazing use on designated lands was made when BLM adopted the November 2008 Monticello Field Office RMP. ROD and Approved RMP at 27 ("The Approved RMP makes 1,621,515 acres available to grazing, 133,318 acres unavailable to grazing and 6,518 acres restricted to livestock trailing only."), 87-90. As we stated in *SUWA*, 122 IBLA 165, 172-73 (1992), when BLM has considered alternative land uses and their corresponding environmental impacts in a current RMP and associated EIS, it is not required to consider them anew each time BLM decides to approve a particular project that is permissible under the existing RMP. *See Colorado Environmental Coalition*, 161 IBLA 386, 396 (2004).

As to aerial seeding, we note the proposed action provided for ground seeding in accessible areas and aerial seeding in inaccessible areas, and that BLM briefly considered an alternative providing for the aerial seeding of native plant species exclusively. EA at 15, 19.

SUWA's final contention is that BLM violated section 102(2)(C) of NEPA because it did not prepare an EIS to address the significant impacts on the human environment attributable to unique and unknown risks associated with the Project. *See* SOR at 26-30.

In evaluating the significance of likely impacts of the proposed Project, 40 C.F.R. § 1508.27 identifies a number of intensity (or severity) factors. BLM is directed to consider "[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks."

BLM weighed the context and intensity (or severity) criteria in 40 C.F.R. § 1508.27 and determined the Project was not likely to adversely affect soils, vegetation, and other aspects of the human environment in a significant manner. *See* FONSI at unp. 1. Based on similar restoration projects and fuel treatments in the Canyon Country Fire Zone, the expert opinion of resource professionals, and the analyses contained in the August 2008 Final EIS prepared for the November 2008 Monticello Field Office RMP, as well as the 2007 PEIS for using herbicides and the 2007 PER for vegetation treatments on public lands in 17 Western States, BLM determined the likely environmental impacts of implementing the Project do not involve "unique or unknown risks." FONSI at unp. 2; *see also* EA at 36.

SUWA asserts that, aside from the Ross Study, BLM has “no other past vegetation project within the Colorado Plateau” that has provided evidence regarding the likely effects of the current Project. SOR at 28. Once again, SUWA would dismiss vegetation treatments in the Great Basin and elsewhere in the western United States, completely discounting BLM’s reliance on its resource experts and the extensive analyses contained in the Monticello RMP EIS, the PEIS and PER, all of which informed BLM’s assessment regarding the likely environmental impacts of the Project. See EA at 40, 42. While perhaps not sufficient to eliminate all uncertainty of any kind regarding the likelihood of achieving Project goals, SUWA also has not identified any specific Project impact or adequately shown that any such impact will be significant. See Answer at 15.

SUWA only generally refers to likely environmental impacts, noting BLM assumed that successful revegetation and soil stabilization would render the effects short-lived. SUWA argues many variables will affect “how treatments are implemented and how systems respond to treatments.” SOR at 27 (quoting CRC Letter at 3; NPS Memorandum at 1). We do not disagree that the success of the Project depends upon many factors, and neither does BLM. See EA at 36, 37 (“[W]eather conditions during the years of the project implementation and for two to five years . . . would dictate the success rate of seeding efforts and any long-term impacts beyond ten years.”), 45 (“Successful tree removal treatments are highly specific to a particular site and can depend on timing, the method used for removal, and other details such as soils and weather patterns.”); EA, Appendix H, at Comment 23 (“BLM recognizes that there is a high degree of environmental heterogeneity in the project area and that where one treatment may work in one area it would not be appropriate in another.”); see Letter to BLM from Bruce B. Adams, Chairman, San Juan County Commission, dated Oct. 1, 2012 (“Success of treatments will be fairly uncertain, especially in the drier climate of Beef Basin. Monitoring the effectiveness of proposed treatments and progress toward achieving objectives will be critical in determining whether to continue with or modify treatments.”). However, what is at issue is whether BLM was sufficiently informed regarding the likely environmental impacts of each treatment mode on various resource values, and whether BLM had an adequate basis for weighing the intensity criteria as it did to conclude those impacts would not be significant. We find that BLM’s reasoning is well supported by the record.

Ultimately, it seems clear that SUWA’s true concern is not the adequacy of BLM’s environmental analysis, but the fact that in the end BLM decided to go forward with the Project, despite SUWA’s objections. That an appellant prefers that BLM take another course of action does not show that BLM violated the procedural requirements of NEPA. See, e.g., *San Juan Citizens Alliance*, 129 IBLA 1, 14 (1994). While compliance with NEPA is “designed to ‘insure a fully informed and well-considered decision,’” having adequately identified and evaluated the adverse

environmental effects of the proposed action, BLM “is not constrained by NEPA from deciding that other values outweigh the environmental costs,” and going forward with the action. *Biodiversity Conservation Alliance*, 174 IBLA 1, 13 (2008) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978)); *Wyoming Audubon*, 151 IBLA 42, 50 (1999) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

\_\_\_\_\_/s/  
T. Britt Price  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James F. Roberts  
Administrative Judge